IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.429 of 2007

Decided on:December 13, 2007.

State of Himachal Pradesh ***…Petitioner.***

VERSUS

Durga Nand ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]No

For the Petitioner: **Mr.M.L.Chauhan, Addl.A.G.**

For the respondent:

Kuldip Singh, Judge (Oral)

This is an application of the State seeking leave to file appeal against the judgment dated 28.3.2007 passed by learned Judicial Magistrate 1st Class, Theog in Case No.196-1 of 2005 acquitting the respondent under Sections 323, 325 I.P.C.

2. The prosecution case, in brief, is that complainant Narender Diwan along with Suresh Kumar on 29.6.2005 at about 9.05 P.M. reported at Police Station, Kotkhai vide *Rapat* Ext.PW-6/A that at about 7 P.M. along with Devinder Kumar, they went to Apple Crown Restaurant and took beer. They had some altercation with Manoj Kumar, the owner of the restaurant, over the bill. They did not make any payment and came out of the restaurant and were standing on the side of the road. In the meantime, Durga Nand, father of Manoj Kumar, came there with stick and gave stick blows to

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

complainant Narender on nose and head etc. The respondent also gave beatings to Suresh Kumar. They were saved by Devinder Singh. Suresh Kumar lost his golden chain in the beating. On this *Rapat,* complainant Narender Diwan and Suresh Kumar were subjected to medical examination vide M.L.C. Ext.PW-4/A and Ext.PW-4/B. F.I.R. Ext.PW-5/A was registered, spot map Ext.PW-9/A was prepared. The stick Ext.P-1 was produced by respondent and after completion of investigation, challan was put up against the respondent. He was charged under Sections 323, 325 I.P.C. The prosecution examined 9 witnesses. The statement of respondent was recorded under Section 313 Cr.P.C. The respondent did not examine any witness in defence. The learned trial Magistrate acquitted the respondent, as aforesaid. Hence, the State has filed this application.

3. Heard the learned Additional Advocate General. The learned trial Magistrate has recorded a finding that occurrence has not taken place in the manner alleged by the prosecution. The defence of the respondent is that some quarrel took place between them as complainant party did not make payment after consuming beer. As per *rapat* Ext.PW-6/A, the complainant party did not make payment after consuming beer but in the Court PW-1 Narender and PW-2 Suresh have stated that they had paid the bill. This is in contradiction to their stand in *rapat* Ext.PW-6/A. It has come in evidence that respondent is about 55 years old whereas the complainant party are in the age group from 35 years to 38 years. The learned trial Magistrate has rightly drawn the inference that it is not possible for a single person of the age of 55 years to dominate

and beat three persons in the age group of 35 years to 38 years. PW-1 Narender has stated that beating took place outside the restaurant. PW-2 has stated that Manoj and his staff members gave beatings to them near the gate of the restaurant and in the meantime respondent appeared there with stick and gave stick blows to him and Narender. The learned trial Magistrate has noticed that in cross examination, PW-2 has stated that bill was paid by Devinder Singh. PW-8 Devinder Singh has stated that after taking beer Narender and Suresh came out of the restaurant whereas he was standing at the counter. He has further stated that PW-1 and PW-2 did not make the payment whereas PW-1 and PW-2 have stated that payment of bill was made. PW-1 Narender and PW-2 Suresh have denied that stick Ext.P-1 is the same stick with which beatings were given to them whereas PW-8 Devinder Singh has stated that stick Ext.P-1 is the same with which beatings were given. The learned trial Magistrate has noticed various contradictions in the prosecution story. The learned Magistrate has taken a possible view from the material on record for acquitting the respondent. No case has been made out for grant of leave to file appeal against the impugned judgment. Hence, leave to appeal refused and the petition is rejected.

December 13, 2007 ***(Kuldip Singh), J.***

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